

ARTICLE 45-09

REGULATION OF UNAUTHORIZED INSURERS AND INSURANCE

Chapter
45-09-01 Surplus Lines Insurance

CHAPTER 45-09-01 SURPLUS LINES INSURANCE

Section	
45-09-01-01	Definitions
45-09-01-02	Surplus Lines Insurance Producer Application
45-09-01-03	Surplus Lines Insurance Producer May Conduct Search
45-09-01-04	Presumption - Diligent Search
45-09-01-05	Other Acceptable Lines of Coverage
45-09-01-06	Surplus Lines Affidavit - Time for Filing
45-09-01-07	Surplus Lines Affidavit - Limits on Availability
45-09-01-08	Additional Policy Endorsement Requirement
45-09-01-09	Statement of Taxable Premiums

45-09-01-01. Definitions. Unless otherwise defined, or made inappropriate by context, all words used in this chapter have meanings given to them under North Dakota Century Code chapters 26.1-02, 26.1-26, and 26.1-44.

History: Effective January 1, 1982.

General Authority: NDCC 26.1-44-09

Law Implemented: NDCC 26.1-44

45-09-01-02. Surplus lines insurance producer application. The insurance commissioner will not issue a surplus lines insurance producer's license until the applicant has met the requirements of North Dakota Century Code section 26.1-26-17 and has completed and filed with the commissioner a completed application for a surplus lines insurance producer license. (Appendix I)

History: Effective January 1, 1982; amended effective December 1, 2001.

General Authority: NDCC 26.1-26-49, 26.1-44-09

Law Implemented: NDCC 26.1-26-17, 26.1-26-18

45-09-01-03. Surplus lines insurance producer may conduct search. An insured is permitted to designate the surplus lines insurance producer as the insured's agent for purposes of conducting a diligent search to ascertain whether the insured is unable to procure the insurance, indemnity contract, or surety bond desired from a company authorized to do business in this state.

History: Effective January 1, 1982; amended effective December 1, 2001.

General Authority: NDCC 26.1-44-09

Law Implemented: NDCC 26.1-44-02

45-09-01-04. Presumption - Diligent search. A presumption that a diligent search has been made by the insured and that the insured was unable to procure the insurance, indemnity contract, or surety bond desired from a company authorized to do business in this state is created when the insurance, contract, or bond is written in one of the categories set out in Appendix II.

History: Effective January 1, 1982; amended effective December 1, 2001.

General Authority: NDCC 26.1-44-09

Law Implemented: NDCC 26.1-44-02

45-09-01-05. Other acceptable lines of coverage. The categories designated in Appendix II are not to be considered as the only lines of coverage in which unauthorized insurers may be used. Other categories of coverage not listed may be acceptable because of special underwriting considerations, i.e., losses, high exposure, etc. Any exceptions must be fully explained on the surplus lines affidavit and approved by the insurance commissioner.

The securing of advantage as to lower premium rates or as to the terms of the insurance contract do not constitute justification nor are they special underwriting considerations sufficient to allow the surplus lines broker to use an unauthorized company nor lines of coverage other than those designated in Appendix II.

History: Effective January 1, 1982; amended effective December 1, 2001.

General Authority: NDCC 26.1-44-09

Law Implemented: NDCC 26.1-44-02

45-09-01-06. Surplus lines affidavit - Time for filing. Before a surplus lines insurance producer procures, affects, or issues any insurance policy, indemnity contract, or surety bond, the surplus lines insurance producer shall execute, personally sign, and file an affidavit in acceptable form with the office of the commissioner (Appendix III). An affidavit will be deemed filed with the commissioner if it is mailed to the commissioner's office within fifteen days of the effective date of the policy.

History: Effective January 1, 1982; amended effective December 1, 2001.

General Authority: NDCC 26.1-44-09

Law Implemented: NDCC 26.1-44-02

45-09-01-07. Surplus lines affidavit - Limits on availability. The surplus lines affidavits filed with the insurance commissioner will be made available only to the insured named in the affidavit upon a written request by that insured; to the surplus lines insurance producer who executed the affidavit upon written request of that surplus lines insurance producer; to duly authorized department personnel; and to any other individual who obtains and files with the commissioner a written waiver and consent form signed by the insured.

History: Effective January 1, 1982; amended effective December 1, 2001.

General Authority: NDCC 26.1-44-09

Law Implemented: NDCC 26.1-44-02

45-09-01-08. Additional policy endorsement requirement. In addition to the endorsement required by North Dakota Century Code section 26.1-44-05, every policy issued under North Dakota Century Code chapter 26.1-44 shall be endorsed as follows: THIS POLICY IS ISSUED PURSUANT TO THE NORTH DAKOTA SURPLUS LINES INSURANCE STATUTE UNDER THE SURPLUS LINES INSURANCE PRODUCER LICENSE OF _____. THE INSURER IS A QUALIFIED SURPLUS LINES INSURER, BUT IS NOT OTHERWISE LICENSED BY THE STATE OF NORTH DAKOTA AND DOES NOT PARTICIPATE IN THE NORTH DAKOTA INSURANCE GUARANTY ASSOCIATION.

History: Effective January 1, 1982; amended effective December 1, 2001.

General Authority: NDCC 26.1-44-09

Law Implemented: NDCC 26.1-44-05

45-09-01-09. Statement of taxable premiums. Surplus lines insurance producers are required by North Dakota Century Code section 26.1-44-06 to file annually a statement of taxable premiums received by that surplus lines insurance producer (Appendix IV).

History: Effective January 1, 1982; amended effective December 1, 2001.

General Authority: NDCC 26.1-44-09

Law Implemented: NDCC 26.1-44-06

APPENDIX I

STATE OF NORTH DAKOTA
DEPARTMENT OF INSURANCE
600 EAST BOULEVARD AVENUE
BISMARCK, ND 58505

APPLICATION FOR SURPLUS LINES INSURANCE PRODUCER'S LICENSE

FOR _____
(Surplus Lines Insurance Producer's Name)

Under the provisions of North Dakota Century Code chapters 26.1-26 and 26.1-44, application is hereby made for a surplus lines broker's license.

The applicant hereby affirms that applicant has read, and is familiar with, the provisions of North Dakota Century Code chapters 26.1-26 and 26.1-44, which govern the placement of insurance with nonadmitted companies, in particular the following requirements:

1. Licenses expire annually on April thirtieth, and must be renewed on or before May first if they are to continue uninterruptedly.
2. On each risk placed under a surplus lines license, the surplus lines insurance producer must make affidavit, in a form acceptable to the insurance commissioner that after reasonable diligent search, the risk cannot be placed with a licensed company.
3. Each policy issued under a surplus lines license must be endorsed "THIS POLICY IS ISSUED PURSUANT TO THE NORTH DAKOTA SURPLUS LINES INSURANCE STATUTE UNDER THE SURPLUS LINES INSURANCE PRODUCER LICENSE OF _____. THE INSURER IS A QUALIFIED SURPLUS LINES INSURER, BUT IS NOT OTHERWISE LICENSED BY THE STATE OF NORTH DAKOTA AND DOES NOT PARTICIPATE IN THE NORTH DAKOTA INSURANCE GUARANTY ASSOCIATION." The surplus lines insurance producer shall properly complete the endorsement by typing or printing the surplus lines insurance producer's full name in the space provided and shall sign and date the endorsement.
4. The surplus lines insurance producer is required to keep a separate record of business transacted under the surplus lines license, and on or before April first of each year, must file with the insurance commissioner a statement for the preceding calendar year ending on December thirty-first, giving the name of the insured to whom each policy has been issued, the name and home office of each company issuing any

such policy, the amount of such insurance, the rates charged therefor, the gross premiums charged, the date and term of the policy, and the amount of premium returned on each policy canceled or not taken, together with such other information and upon such form as required by the insurance commissioner.

5. At the time of filing the above statement, the surplus lines insurance producer is required to pay the tax (current rate one and three-fourths percent) on the premium so written on risks or exposures located in this state.
6. The surplus lines insurance producer is personally responsible for investigating the financial condition of the nonadmitted insurer before placing the insurance therewith. The company must have capital and surplus amounting to at least the amount required of a licensed carrier transacting the same class of business.
7. Before a company can be qualified as a nonadmitted surplus lines outlet, it must appoint the insurance commissioner in writing to be its true and lawful attorney, upon whom legal process in any action or proceeding against it may be served.
8. The insurance commissioner may inspect and examine at any time a surplus lines insurance producer's records of business transacted under the surplus lines license.
9. The penalty for making a false affidavit includes revocation of license, and failure to make and file the required annual statement or to pay the taxes required prior to May first can result in a fine of twenty-five dollars per day for each day of the delinquency.

Remittance of ten dollars covering the statutory fee for issuance of the surplus lines license is attached hereto.

Signature

Print Name

Date

Business Address

City, State, Zip Code

Telephone Number

APPENDIX II

Categories of Acceptable Surplus Lines Coverage

The following categories of surplus lines coverage are not the only lines which may be written in North Dakota. Other lines of coverage not on this list may be acceptable because of special underwriting considerations. Any exceptions must be fully explained on the surplus lines affidavit and approved by the insurance commissioner.

There is a presumption that the insured is unable, after diligent search, to procure the insurance, indemnity contract, or surety bond desired from a company authorized to do business in this state if the coverage written is in an approved category.

These categories may be changed from time to time at the discretion of the insurance commissioner subject to provisions of North Dakota Century Code chapter 28-32, the Administrative Agencies Practice Act.

1. Fiduciary liability.
2. Professional liability (E O) except for hospitals.
3. Directors and officers.
4. Ocean marine cargo, liability and hull.
5. Hazardous cargo and short-term trip transit.
6. Bridges (large).
7. Heavy woodworking property (unprotected, high-value sawmills).
8. Product liability (hazardous).
9. Ski lifts and tows' liability.
10. Fireworks, ammunition, fuse, cartridges, power, nitroglycerine, explosive gases.
11. Environmental impairment - pollution.
12. Kidnap ransom.
13. Oil and gas liability and marine.
14. Livestock mortality (high values and unusual).

15. Short tail (hole-in-one, 300 bowling score, etc.).
16. Large utilities (generation, transmission).
17. Building demolition and moving.
18. Mono line liquor legal liability.
19. Surcharged fire and allied lines excluding uncontrolled marine.
20. High-value substandard private passenger automobile.
21. Commercial automobile physical damage coverage in excess of rating organizations' filed rates.
22. Any excess liability coverages.
23. Day care liability insurance coverages.

History: Amended effective February 1, 1983; November 1, 1987; December 1, 2001.

General Authority: NDCC 26.1-44-09

Law Implemented: NDCC 26.1-44-02

APPENDIX III

Surplus Lines Affidavit

STATE OF NORTH DAKOTA) ss.
COUNTY OF _____)

_____ being first sworn on oath deposes and says:
Name of Surplus
Lines Insurance Producer

THAT the affiant is an insurance producer currently licensed under the North Dakota statutes, for the kind of insurance required;

THAT the insured is unable, after diligent search, to procure the insurance from a company authorized to do business in this state; and

THAT in order to procure the required insurance for the insured; it has been necessary to place part/all of same in a company/companies not licensed in this state.

1. Name of insured.
2. Address of insured.
3. D.B.A. - Name and address if different from above.
4. Location and description of risk.
5. Amount of coverage or limit of liability.
6. Date of application.
7. Term of policy.
8. Premium.
9. Surplus lines category #_____. (If no category applicable, describe the risk in greater detail providing justification for the use of an unauthorized carrier. The description and justification should be set out on a separate sheet of paper attached to and incorporated into the affidavit if there is insufficient room below.)
10. Name of producer if the business is placed with you by another insurance producer.
11. Unauthorized carrier used (complete name and address).

Signature of Surplus
Lines Insurance Producer

Subscribed and sworn to before me this
_____ day of _____, 20__.

(Seal)

Notary Public

APPENDIX IV



STATEMENT OF TAXABLE PREMIUMS RECEIVED ON NORTH DAKOTA BUSINESS NORTH DAKOTA INSURANCE DEPARTMENT SFN 17419 (8-01)

Gross Direct Premiums received during calendar year _____, less return premiums, refunds, and abatements	\$
Less Dividends paid to policyholders or used in reduction of premiums	\$
Total: Taxable Premiums Balance	\$
Tax Liability (1 3/4% of Taxable Premiums)	\$

Surplus Lines Insurance Producer	Surplus Lines License Number
----------------------------------	------------------------------

I hereby certify that I am the above Surplus Lines Insurance Producer and that the foregoing is a true and correct statement.

Signature _____